

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,) CASE NO.: 1:09CR00506
)
 Plaintiff,) JUDGE JOHN R. ADAMS
)
 v.)
) GOVERNMENT'S RESPONSE IN
 THOMAS J. GRECO, JR.,) OPPOSITION TO DEFENDANT GRECO'S
) PRO SE MOTION TO DEDUCT THE
 Defendant.) \$100,000 CHARGED TO JOHN CARROLL
) BY JUDGE O'MALLEY FOR ATTORNEY
) FEES FROM MR. GRECO'S AMOUNT OF
) RESTITUTION
)

Now comes The United States of America, by and through counsel, Michelle M. Baeppeler, First Assistant United States Attorney, and Robert J. Patton, Senior Litigation Counsel, and hereby submits its Response in Opposition to Defendant Greco's Motion to Deduct the \$100,000 Charged to John Carroll by Judge O'Malley for Attorney Fees from Mr. Greco's Amount of Restitution (R. 324). The reasons in support of the government's position, respectfully requesting that this Court deny defendant's motion, are more fully set forth in the memorandum incorporated herein and attached hereto.

Respectfully submitted,

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First Assistant United States Attorney

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MEMORANDUM

In his *Pro Se* Motion to Deduct the \$100,000 Charged to John Carroll by Judge O’Malley for Attorney Fees from Mr. Greco’s Amount of Restitution (R. 324)(Defendant’s motion), Defendant Greco asks this Court, “to deduct the \$100,000 charged to John Carroll of Metrohealth by Judge O’Malley for Outside Attorney Fees.” (R. 324, PageID# 6257). Defendant Greco references the Sentencing Hearing (R. 128-129: Minutes, PageID# 123-24) and multiple restitution hearings (R. 152: Minutes, PageID# 4036; R. 156: Minutes, PageID# 4039; R. 174: Minutes, PageID# 4050-77). These hearings followed his convictions of conspiracy to commit bribery concerning programs receiving Federal funds, bribery concerning programs receiving Federal funds, aiding and abetting, Hobbs Act conspiracy, Hobbs Act conspiracy, aiding and abetting, filing false income tax returns, and conspiracy to commit mail fraud. (R. 64: Jury Verdict, PageID# 613-26).

Defendant claims that an error in restitution has been made. However, at no time in the multitude of proceedings either in this Court or upon appeal has the issue presently raised in this motion, regarding Greco’s request to reduce his restitution due and owing, been formally addressed. Defendant’s motion should be denied as the requested relief is contrary to or unsupported by law.

Defendant’s motion is misguided as his request for modification of restitution in this matter as it is contrary to the plain language of the applicable federal statute. As an initial matter, this Court’s Restitution Order of July 26, 2011 (R. 179: Judgment, PageID# 3462) requires this defendant to pay \$994,734.84 to the Metro Health System. This Court’s docket reflects that defendant did not timely appeal this Judgment.

Title 18, § 3664 of the United States Code entitled, “Procedures for issuance and enforcement of order of restitution” squarely addresses the relief sought in defendant’s motion in section (o) which provides:

(o) A sentence that imposes an order of restitution is a final judgment notwithstanding the fact that--

(1) such a sentence can subsequently be--

(A) corrected under Rule 35 of the Federal Rules of Criminal Procedure and section 3742 of chapter 235 of this title;

(B) appealed and modified under section 3742;

(C) amended under subsection (d)(5); or

(D) adjusted under section 3664(k), 3572, or 3613A; or

(2) the defendant may be resentenced under section 3565 or 3614.

Accordingly, this Court’s Restitution Order is a “final judgment” that cannot be adjusted as defendant now requests.

In conclusion, Defendant’s motion seeking a modification to this Court’s Restitution Order, without reference to any legal authority, is wholly misplaced. It is deeply flawed as it neither addresses that fact that Defendant Greco did not timely file an appeal regarding restitution nor considers the provisions of Title 18, § 3664 of the United States Code that has a direct bearing on and bars his request. Accordingly, Defendant’s motion is deeply flawed and should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October 2022 a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Robert J. Patton

Robert J. Patton
Assistant U.S. Attorney